



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Touching Lives Everyday"

REQUEST FOR PROPOSALS

RFP # HHSC FY06-476

**Energy Measurement and Verification
Consulting Services**

for

**Hilo Medical Center
Kauai Veterans Memorial Hospital
Kona Community Hospital**

**Hawaii Health Systems Corporation
3675 Kilauea Avenue
Honolulu, Hawaii 96816
AN AGENCY OF THE STATE OF HAWAII**

Proposal Due Date & Time:

Monday, October 23, 2006; 3:00 PM HST

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SECTION 1

OFFER

The undersigned Offeror hereby agrees to provide all services in accordance with the terms and requirements stated herein, including all exhibits, amendments, and best and final offers (if any). Signature also acknowledges receipt of all pages indicated in the Table of Contents.

Hawaii State Tax License No.:

For clarification of this offer, contact:

Federal Employer Identification No.:

Name: _____

Phone: _____

E-Mail Address: _____

Fax: _____

Company Name

Signature of Person Authorized to Sign Offer

Address

Printed Name

City State Zip

Title

CERTIFICATION

By signature in the Offer section above, the offeror certifies:

1. The submission of the offer did not involve collusion or other anti-competitive practices.
2. The offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246 or Chapter 368, HRS
3. The offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. **The Offeror certifies that the above referenced organization ___ is/___ is not a legislator, or an employee or a business in which a legislator or an employee has a controlling interest.**

ACCEPTANCE OF OFFER (to be completed by HHSC)

Your offer, including all exhibits, amendments and best-and-final offer (if any), contained herein, is accepted.

The Contractor is now bound to provide all services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by HHSC.

This contract shall henceforth be referred to as Contract No. _____.

Awarded this _____ day of _____, 20 ____.

Signed:

Thomas M. Driskill, Jr., President & CEO for HHSC

SECTION 2

2.1 INTRODUCTION

This Request For Proposal (hereinafter “RFP”) is issued by the Hawaii Health Systems Corporation (“HHSC”), an Agency of the State of Hawaii. Thank you for your interest in submitting a proposal for this solicitation. The rationale for this RFP is to promote and ensure the fairest, most efficient means to obtain the benefits of the most qualified, responsive and responsible proposal. Hereinafter, organizations interested in submitting a proposal in response to this RFP shall be referred to as “Offerors”.

2.2 PROCUREMENT TIMETABLE

The timetable set out herein represents HHSC’s best estimate of the schedule that will be followed in the RFP process. If an event of the timetable, such as “Proposal Submission Deadline” is delayed, the rest of the timetable dates may be shifted by the same number of days. Offerors will be advised, by addendum to the RFP, of any changes to the timetable.

Event

Scheduled Date

Closing Date for Receipt of Intent to Submit Proposals.....Thursday, September 21st

Submission Deadline for Questions, Clarification Requests.....Friday, September 22nd

Proposal Submission Deadline**Monday, October 23rd at 3:00 PM**

Proposal Evaluations.....October 24th through October 30th

Contractor Selection/Award Notification (on/about)November 1st, 2006

Contract Tentative Commencement DateNovember 6th, 2006

2.3 SUBMISSION OF INTENT TO SUBMIT PROPOSAL

Offerors should submit, in writing, by Friday, September 22nd, their intent to submit (or not submit) a proposal. Please forward your company’s intentions either by fax to: 808 933-2793 or by email to: gcallahan@hhsc.org.

2.4 POINT OF CONTACT FOR THIS SOLICITATION

Offerors are encouraged to submit written questions and requests for clarification pertaining to the RFP to the single point of contact for this solicitation named below.

Questions must be submitted in writing via hand-delivery, electronic mail, facsimile or post mail to the following not later than the “Submission Deadline for Questions, Clarification Requests”,

identified above, in order to generate an official answer. The point of contact for this solicitation is:

Gary L. Callahan, Contract Manager
Hilo Medical Center
1190 Waianuenue Avenue
Hilo, Hawaii 96720-2020
PH: 808-933-2775
Fax: 808-933-2793
Email: gcallahan@hhsc.org

All written questions will receive an official written response from HHSC and become addendums to the RFP. The only official position of HHSC is that which is stated in writing and issued in the RFP as addendums thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response/statement and may not be relied upon.

2.5 RFP AMENDMENTS

HHSC reserves the right to amend the RFP any time prior to the ending date for “Proposal Evaluations, etc”, identified above.

2.6 CANCELLATION OF RFP

The RFP may be canceled if it is determined to be in the best interests of HHSC.

2.7 PROTESTS

A protest based upon the content of the solicitation shall be submitted in writing within five (5) working days after the aggrieved individual/business knows or should have known of the facts giving rise thereto; provided further that the protest shall not be considered unless it is submitted in writing prior not later than the “Proposal Submission Deadline,” identified above.

A protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract. The notice of award, if any, resulting from this solicitation shall be posted on the Hawaii State Procurement Office website located at:

<http://www.hawaii.gov/spo2/>

Any and all protests shall be submitted in writing to the Head of the Purchasing Agency (HPA), as follows:

THOMAS M. DRISKILL, JR.
Head of the Purchasing Agency
Hawaii Health Systems Corporation
3675 Kilauea Avenue
Honolulu, Hawaii 96816

SECTION 3

SCOPE OF WORK

3.1 INTRODUCTION

The Hawaii Health Systems Corporation (HHSC), an agency of the State of Hawaii, is seeking a qualified Energy Consultant to provide analysis and review of the results and current status of an energy conservation contract that the named facilities participated in over the past few years. HHSC is attempting to validate the results from the contract and to substantiate the results and justify any further continuation of those or similar services.

3.2 CONTRACT START DATE/PERIOD OF PERFORMANCE

Any resultant contract under this solicitation is anticipated to run for a minimum of one year with the possibility of a single one-year renewal option. The contract start date will be the date HHSC signs the “Acceptance of Offer” section of the Offer and Acceptance page of this selected Offeror’s proposal, unless otherwise designated in this agreement.

3.3 SCOPE OF WORK

General

The CONTRACTOR shall furnish all personnel, labor and materials necessary to conduct the necessary analysis and verification of the services requested in the energy conservation contract; the success of that contractor’s recommendations and implemented conservation methods and report on those findings. A separate report shall be provided for each facility listed in this solicitation.

Specific Tasks

The CONTRACTOR shall conduct the following tasks for each facility:

Review current energy conservation contract to ensure that all deliverables have been provided and completed;

Provide a summary of any and all differences between the contract and existing operations as they pertain to the contract;

Review and analyze Guarantee Reconciliation for Hilo and Kona years 1, 2 and 3 and for Kauai for year 1;

Compare and contrast the available data from each facility with the data provided by the energy conservation contractor, and prepare a written report of the findings based upon the review and analysis;

Provide recommendations regarding noncompliance issues for the energy conservation contractor’s agreement for each facility and the annual Guarantee Reconciliation; and

Provide recommendations if the existing energy contract should be modified to resolve any issues that may be noted in the review of the guarantee reconciliation.

SECTION 4 **PROPOSALS**

4.1 PROPOSAL PREPARATION

Offerors shall prepare a written proposal in accordance with requirements stated herein and provide the proposal to the individual at the address indicated below. The proposal shall include the technical and cost categories identified below.

Additionally, proposals shall include and address, at a minimum:

The completed “Offer and Acceptance” page signed by a person authorized to bind the Offeror’s company;

The technical information identified below;

The pricing information identified below;

Transmittal Cover Letter, ***Appendix A***;

Acceptance (or Notifications of Clarifications) of our General Conditions, ***Appendix B***, and

Originals of the following documents:

“Tax Clearance Certificate” from the Hawaii State Department of Taxation (refer to instructions below);

“Certificate of Compliance” from the Hawaii State Department of Labor and Industrial Relations; and

“Certificate of Good Standing” from the Department of Commerce and Consumer Affairs Business Registration Division.

(Refer to Section 5, Article 5.5, entitled “Certifications”, below, for instructions on how to obtain Tax Clearance, Certificate of Compliance and Certificate of Good Standing).

Offerors must submit all information specified above to qualify their proposal for evaluation and consideration for award.

Additionally, the General Conditions, the Special Conditions and the Scope of Services contained in this RFP packet shall be read by the Offeror, as they will form a part of the contract to be entered into between the Offeror and HHSC, and they shall govern all Services.

4.2 DISQUALIFICATION OF PROPOSALS

HHSC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the RFP and which demonstrate an understanding of the scope of Services. Any proposal offering any other set of terms and conditions contradictory to those included in the RFP may be disqualified without further notice. HHSC reserves the right to ask for clarification of any item in the proposal.

4.3 SUBMISSION OF PROPOSALS

Each Offeror is to submit their proposal with one (1) original and four (4) copies (for a total of five (5) sets) in the format as contained in this RFP. **The original copy of the proposal should be clearly labeled “ORIGINAL,”** no later than 3:00 PM, HST, on the “Proposal Submission Deadline”, identified in SECTION 1. **Proposals received after this time/date may be rejected.** The original shall be clearly marked “ORIGINAL” and copies shall be clearly marked “COPY”. Mail or deliver proposals to the following address:

Gary L. Callahan, Contract Manager
Hilo Medical Center
1190 Waianuenue Avenue
Hilo, Hawaii 96720-2020
PH: 808-933-2775
Fax: 808-933-2793
Email: gcallahan@hhsc.org

The outside cover of the package containing the proposal should be noticeably marked, as follows:

Proposal Submitted in Response to: HHSC RFP # FY06-476

Proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. The register of proposals and OFFERORS proposals shall be open to public inspection after the contract is executed by all parties.

OFFERORS shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. HHSC cannot guarantee that designated data will be kept confidential. Pricing will not be held in confidence after contract award. The proposals are subject to disclosure rules set forth in Chapter 92F, H.R.S. The OFFEROR bears the burden of establishing that the designated data is exempted from the disclosure requirements set forth in chapter 92F.

All proposals and other material submitted by OFFERORS become the property of HHSC and may be returned only at HHSC’s option.

4.4 PROPOSAL INFORMATION

The Offeror is to submit their proposal with the required number of copies in the format as contained in this RFP. The material should be in sequence and related to the RFP. HHSC will not provide any reimbursement for the cost of developing or presenting proposals in response to this RFP. Failure to include the requested information may have a negative impact on the evaluation of the Offeror’s proposal. The proposal should include at least the following information:

4.4.1. Experience and Expertise of Key Personnel:

The qualifications of the key personnel proposed by the Offeror to perform the requirements of this solicitation will be considered in the evaluation. Therefore, the offeror should submit detailed information related to the experience, technical expertise and qualifications for each key personnel proposed. Offeror should provide the names and titles for all proposed key personnel; clerical staff is not considered key personnel.

The Offeror should provide an organizational chart showing the staffing and lines of authority for the key personnel to be utilized. The relationship of the project leader to management and to support personnel should be clearly illustrated.

The Offeror should provide a resume for each proposed key person, which substantiates the key person, possesses the experience and expertise to provide the assigned tasks and responsibilities. Each resume should include a description of the type and years of experience, training and other pertinent qualifications. The offeror should also indicate the number of estimated amount of time the proposed person will devote to any resultant contract. Resumes should be limited to two (2) pages.

Provide a detailed explanation of each key person's responsibilities as related to the requirements of the Scope of Work.

The Offeror may submit any other pertinent information that would substantiate each proposed key person possesses the experience, expertise and capability to provide the assigned services.

4.4.2. Experience and Expertise of the Firm:

The Offeror's experience and past performance will be evaluated on the extent of its success in managing and integrating work relevant to that defined in the Scope of Work. Therefore, the Offeror is advised to submit any and all information which documents successful and reliable experience in past performances as related to this RFP.

References: References should be verifiable and be able to comment on the Offeror's related experience. The Offeror should submit, at a minimum, three (3) professional services references for services provided over the last two (2) years that would demonstrate the Offeror possesses an understanding and the experience in providing the required service. As these references may be checked, insure all information is current, accurate and prior permission to use is obtained from each reference.

The Offeror should provide an organizational chart which clearly shows the reporting and lines of authority, to include all proposed key personnel and any proposed subcontractors. The organizational chart should identify the prime point of contact between the Offeror and HHSC.

The Offeror may submit any other pertinent information that would substantiate the firm possesses the experience, expertise and capability to provide the required services.

4.4.3 Proposed Method of Approach:

Proposals will be evaluated based on the Offeror's distinctive plan for providing these specialized services. Since the evaluators have already read the Scope Of Work for the services described, it is not necessary for the Offeror to repeat the exact language, or to present a paraphrased version, as an original idea for a technical approach.

The Offeror may utilize a written narrative or any other printed technique to demonstrate his ability to satisfy the Scope of Work. When appropriate, the narrative should describe a logical progression of tasks and efforts starting with the initial steps or tasks to be accomplished and continuing until all proposed tasks are fully described. The language of the narrative should be straightforward and limited to facts, solutions to problems, and plans of proposed action. The usage of technical language should be minimized and used only to describe a technical process.

4.4.4 Cost:

The evaluation of the category of Cost shall be based on the prices, as indicated on the Pricing Schedule submitted with Offeror's proposal. In order to determine the maximum liability to the State of Hawaii, any percentage increases proposed for extension option periods shall be also included in the cost evaluation.

4.4.5. Additional Information:

The Offeror may submit any other pertinent information that would substantiate the Offeror has the experience, expertise and capability to provide the required services.

4.5 INTENT TO PROVIDE CERTIFICATE OF INSURANCE

The Offeror should provide a statement that, if notified of contract award, will submit to HHSC for review and acceptance, the applicable certificate/s of insurance as required within this RFP document, within five (5) business days of such notification.

4.6 OFFEROR'S RESPONSIBILITY

The Offeror is cautioned that it is the Offeror's sole responsibility to submit information related to the evaluation categories and that HHSC is under no obligation to solicit such information if it is not included with the Offeror's proposal. Failure of the Offeror to submit such information may cause an adverse impact on the evaluation of the Offeror's proposal.

4.7 DISCUSSIONS

In accordance with A.R.S. §41-2534, after the initial receipt of proposals, discussions may be conducted with offeror(s) who submit proposals determined to be reasonably susceptible of being selected for award. Award may be made without discussions; therefore, offers should be submitted complete and on most favorable terms.

4.8 EXCEPTIONS TO “SCOPE OF WORK” REQUIREMENTS

If any “Scope of Work” requirement is not acceptable to the Offeror, provide detailed explanation of the reasons why, by attachment to the proposal. HHSC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the “Scope of Work”.

SECTION 5 **EVALUATION**

5.1 INTRODUCTION

The evaluation of proposals will be conducted comprehensively, fairly, and impartially. The evaluation will be made on the basis of experience, the Offeror's narrative discussion as to their methodology for meeting the requirements of the scope of work, the ability of the Offeror to best meet HHSC's specified requirements and the acceptability of the proposed pricing.

5.2 EVALUATION CRITERIA

Evaluation criteria are listed in the relative order of importance. The evaluation will be conducted in accordance with an established evaluation plan. The award will be made to the responsible offeror whose proposal is determined to be the most advantageous to HHSC based on the following criteria:

- 5.2.1 Experience and Expertise of Key Personnel
- 5.2.2 Experience and Expertise of the Firm
- 5.2.3 Proposed Method of Approach to the Scope of Work
- 5.2.4 Cost

5.3 PROPOSAL NEGOTIATIONS (OPTIONAL)

HHSC may conduct negotiations with OFFERORS. OFFERORS proposals may be accepted without negotiations. HHSC shall inform OFFERPRS of specific negotiation topics and issues; and, schedule negotiations proceedings.

5.4 BEST AND FINAL OFFERS

If negotiations are conducted with any Offeror, HHSC will request a Best and Final Offer in order to document and formalize the results of the negotiations.

SECTION 6

AWARD OF CONTRACT

6.1 AWARD OF CONTRACT

Award of contract shall be made to the most responsible and responsive OFFEROR whose proposal is judged/determined, by the HHSC's evaluation team, to provide the best value to HHSC, considering all evaluation reviews and results.

6.2 CONTRACT AWARD NOTIFICATION

An official "notice of award" letter will be provided to the successful OFFEROR; and, a "notice of non-award" letter shall be provided to all un-successful Offerors. The notice of award letter resulting from this solicitation shall be posted on the State Procurement Office's website.

No work is to be undertaken by the CONTRACTOR prior to the receipt of the "Offer and Acceptance" page signed as accepted by HHSC.

6.3 CONTRACT DOCUMENT

The contract will be awarded by the signing the "**Acceptance of Offer**" section of the Offer and Acceptance, page 3 of 36 of this solicitation by HHSC. The contract shall consist of the following: the RFP, with any and all addendums; GENERAL CONDITIONS and any SPECIAL CONDITIONS; and, the OFFEROR's accepted proposal, with any and all addendums, Best and Final Offer (if any).

6.4 GENERAL CONDITIONS

The GENERAL CONDITIONS (*Appendix C*) are applicable and shall be part and whole and attached to the Contract. HHSC reserves the right to add terms and conditions during contract negotiations, if conducted. Additional terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

6.5 CERTIFICATIONS:

Prior to HHSC being able to enter into a contract with any Offeror, pursuant to § 103D, HRS, Offerors shall be required to provide proof of the following;

6.5.1. TAX CLEARANCE CERTIFICATE

Pursuant to § 103D-328, HRS, the CONTRACTOR is required to obtain/posses a Tax Clearance Certificate issued by the Hawaii State Department of Taxation and the Internal Revenue Service (IRS) prior to executing a contractual agreement with a State Agency.

The certificate is valid for six (6) months from the most recent approval stamp date on the certificate and must be valid on the date it is received by HHSC.

The Tax Clearance Certificate shall be obtained on the State of Hawaii, DOTAX TAX CLEARANCE APPLICATION Form A-6 (Rev. 10/2004) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website and by mail or FAX. Form A-6 is the responsibility of the CONTRACTOR and must be submitted directly to the DOTAX and not to HHSC.

DOTAX website
(www.state.hi.us/tax/tax.html).
DOTAX forms by FAX/Mail:

Open “Forms” on the navigate sidebar &
open “alphabetical Listing of Tax Forms
808 587-7572
1 800 222-7572
(on Oahu) 808 587-7572
(outside of Oahu) 808 678-0522

4.6.2. CERTIFICATE OF COMPLIANCE

Pursuant to § 103D-310(c), HRS, the CONTRACTOR is required to obtain/posses a valid Certificate of Compliance from the Hawaii State Department of Labor and Industrial Relations (DLIR) prior to executing a contractual agreement with a State Agency. The certificate is valid for six months from the date of issue and must be valid on the date it is received by HHSC.

The Certificate of Compliance shall be obtained on the State of Hawaii, DLIR APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH SECTION 3-122-122, HAR, Form LIR #27, which is available at www.dlir.state.hi.us (open “Forms”, open “LIR#27) or at the neighbor island DLIR District Offices. The application for the certificate is the responsibility of the OFFEROR and must be submitted directly to the DLIR and not to HHSC. The DLIR will return the form to the CONTRACTOR who in turn shall submit the form to HHSC.

4.6.3. CERTIFICATE OF GOOD STANDING

HAWAII BUSINESS. A business entity referred to as a “Hawaii Business”, is registered and incorporated or organized under the laws of the State of Hawaii. As evidence of compliance, the CONTRACTOR shall obtain/posses a Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG). A “Hawaii Business” that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate. A CONTRACTOR’s status as sole proprietor and its business street address as indicated on the proposal transmittal cover letter (*Appendix A*) will be used to confirm that the CONTRACTOR is a Hawaii Business.

COMPLIANT NON-HAWAII BUSINESS. A business entity referred to as a “Compliant Non-Hawaii Business” is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State. As evidence of compliance, the CONTRACTOR shall obtain/posses a Certificate of Good Standing issued by the Department of Commerce and Consumer Affairs Business Registration Division (BREG).

The Certificate of Compliance can be obtained by phone (call 808 586-2727, M-F 7:45---4:30 HST) or by mail (Department of Commerce and Consumer Affairs, Business Registration Division, PO Box 40, Honolulu, Hawaii 96810). The certificate is valid for six months from date of issue and must be valid on the date it is received by HHSC.

4.6.4. HAWAII COMPLIANCE EXPRESS

Alternatively, Offeror may apply and obtain proof of compliance with the above agencies electronically through the Hawaii State Procurement Office’s new “Hawaii Compliance Express” website. Instructions for using this new service can be found in ***Appendix D***.

PROPOSAL TRANSMITTAL COVER SHEET
RFP #HHSC FY06-476

This page must be completed and have an original signature. Attach this page on top of your proposal. Proposals received without this page or incomplete of the requested information may be rejected from consideration.

Organization: _____

(If a corporation or partnership, the exact legal name as registered with the State Department of Commerce and Consumer Affairs)

Mailing Address: _____

(Post Office Box is not acceptable)

Federal Tax Identification No.: _____

Contractor's License No.: _____

Contact: _____ Telephone: _____

Email Address: _____ Facsimile No.: _____

Certification

The undersigned has carefully examined the scope of work outlined in this RFP, general and special conditions presented in the proposal packet and hereby proposes to furnish at his own expense all labor, items necessary to complete all Work as shown and called for, all according to the true intent and meaning of the plans, specifications, general and special conditions. The undersigned also certifies that the information provided in this proposal is accurately represented.

Authorized signature

Printed name

Title

Date

**GENERAL CONDITIONS
AND
ACCEPTANCE (OR NOTIFICATION OF CLARIFICATIONS) DOCUMENT**

**Offerors Agreement of Acceptance or Notification of Clarifications and Exceptions to the
following GENERAL CONDITIONS:**

On behalf of _____, Offeror, the undersigned does agree that it does not
have any exceptions to the following General Conditions.

Signature: _____

Title: _____

Or

On behalf of _____, Offeror, has the following clarifications and exceptions to
the following General Conditions:

(Please attach additional pages, as required)

**GENERAL CONDITIONS
(NON-PHYSICIAN SERVICES)**

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1. **COORDINATION OF SERVICES BY THE HHSC.** The “head of the purchasing agency,” (which term includes the designee of the head of the purchasing agency), shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Agreement. The CONTRACTOR shall maintain communications with the head of the purchasing agency at all stages of the CONTRACTOR’s work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Agreement. “Purchasing agency” as used in these General Conditions means and includes any governmental body, which is authorized to enter into contracts for the procurement of services.

2. **RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.**

- a. In the performance of services required under this Agreement, the CONTRACTOR is an “independent contractor,” with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement; however, the HHSC shall have a general right to inspect work in progress to determine whether, in the HHSC’s opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. Unless otherwise provided by special condition, it is understood that the HHSC does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the HHSC.
- b. The CONTRACTOR and the CONTRACTOR’s employees and agents are not by reason of this Agreement, agents or employees of the HHSC or the State of Hawaii (“State”) for any purpose, and the CONTRACTOR and the CONTRACTOR’s employees and agents shall not be entitled to claim or receive from the HHSC or the State any vacation, sick leave, retirement, workers’ compensation, unemployment insurance, or other benefits provided to HHSC or State employees.
- c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR’S performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR’S employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR’S employees or agents in the course of their employment.
- d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR have been paid and submit the same to the HHSC prior to commencing any performance under this

Agreement. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under section 103-53, HRS, and paragraph 14 of these General Conditions.

- f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs and other liabilities associated with securing the insurance coverage.

3. PERSONNEL REQUIREMENTS.

- a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Agreement.
- b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, State, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied. Where the facility is JCAHO accredited, CONTRACTOR agrees to meet applicable JCAHO standards.

4. CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS. CONTRACTOR warrants that it and none of its employees, agents or subcontractors performing services or providing goods pursuant to this Agreement are excluded from participation in federal health care programs, as defined in the Social Security Act (Section 1128 and 1128A), and other federal laws and regulations relating to health care. HHSC reserves the right to verify that the above warranty is true and to immediately cancel this Agreement in the event it is violated.

5. NONDISCRIMINATION. No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable Federal, State, or County law.

6. CONFLICTS OF INTEREST. The CONTRACTOR represents that neither the CONTRACTOR, nor any employees or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Agreement.

7. SUBCONTRACTS AND ASSIGNMENTS. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the HHSC and (ii) the CONTRACTOR's assignee or subcontractor submits to the HHSC a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR's assignee or subcontractor have been paid.

8. INDEMNIFICATION AND DEFENSE. The CONTRACTOR shall defend, indemnify, and hold harmless the State, the HHSC, the contracting facility, and their directors, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees and all claims,

suits, and demands therefore, arising out of or resulting from acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

9. COST OF LITIGATION. In case the State, the HHSC, the contracting facility, and their directors, officers, employees, and agents shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Agreement, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the State, the HHSC, the contracting facility, and their directors, officers, employees, and agents, including attorney's fees.

10. LIQUIDATED DAMAGES. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 11 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the HHSC the amount, if any, set forth in this Agreement per calendar day from the date set for cure until either (i) the HHSC reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under paragraph 11.d (Excuse for Non-performance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay.

11. TERMINATION FOR DEFAULT.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, or otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods and services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Agreement and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the State or the HHSC has an interest.
- c. Compensation. Payment for completed goods and services delivered and accepted by the HHSC shall be at the price set forth in the agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount. The HHSC may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to

protect the HHSC against loss because of outstanding liens or claims and to reimburse the HHSC for the excess costs expected to be incurred by the HHSC in procuring similar goods and services.

- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and failure arises out of causes such as; acts of God; acts of a Public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the HHSC under this agreement. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 11.d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to such provision.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Agreement.

12. TERMINATION FOR CONVENIENCE.

- a. Termination. The Agency procurement officer may, when the interests of the HHSC so require, terminate this Agreement in whole or in part, for the convenience of the HHSC. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Agreement terminated and when termination becomes effective.
- b. CONTRACTOR's obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated

performance. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the HHSC. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the HHSC in the manner and to the extent directed by the Agency procurement officer.

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Agreement; and
- (3) The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the HHSC has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the HHSC has breached the Agreement by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 12d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Agreement price plus settlement costs reduced by payments previously made by the HHSC, the proceeds of any sales of goods and manufacturing materials under subparagraph 11c, and the Agreement price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 12d(1) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 12d(1) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Agreement;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such

portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have been sustained a loss if the entire Agreement would have completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 12.b. These costs must not include costs paid in accordance with subparagraph 12.d.(3)(B);

(D) The reasonable settlement costs of the CONTRACTOR including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Agreement and for the termination of subcontracts there under, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this agreement. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Agreement price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 12.d.(1) and the Agreement price of performance not terminated.

13. COST AND EXPENSES. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be subject to the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the DIRECTOR is obtained, reimbursement for subsistence allowable (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for State officers and employees in the executive branch who are excluded from collective bargaining coverage.

14. PAYMENT PROCEDURES; FINAL PAYMENT; TAX CLEARANCE.

- a. Original invoices required. All payments under this Agreement shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Agreement have been preformed by the CONTRACTOR according to the Agreement.

b. Prompt payment.

- (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
- (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

c. Final payment. Final payment under this Agreement shall be subject to section 103-53, HRS, which requires a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State laws against the CONTRACTOR have been paid.

15. FEDERAL FUNDS. If this Agreement is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Agreement to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds.

16. MODIFICATIONS OF AGREEMENT.

- a. In writing. Any modification, alteration, amendment, change or extension of any term, provision, or condition of this Agreement permitted by this Agreement shall be made by written amendment to this Agreement, signed by the CONTRACTOR and the HHSC.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision or condition of this Agreement shall be permitted.

17. CONFIDENTIALITY OF MATERIAL.

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the HHSC.
- b. All information, data, or other material provided by the CONTRACTOR to the HHSC shall be subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by chapter 323F.HRS.

18. CORPORATE COMPLIANCE PROGRAM. A description of the Corporate Compliance Program of HHSC is posted on the HHSC internet (www.hhsc.org). The CONTRACTOR, by signing this contract, acknowledges that it has read said description, and that the CONTRACTOR knows of the fact and substance of the Corporate Compliance Program, which governs operations at all facilities of the HHSC. The CONTRACTOR understands and agrees that employees, agents, and contractors performing any services at any of the HHSC facilities shall be fully subject to such Corporate Compliance Program, as may be amended from time to time, as well as all federal program requirements and applicable policies

and procedures of HHSC and its facilities. The Corporate Compliance Program requires periodic training, including an orientation program, of all people who provide financial, business office, personnel, coding, medical records information systems and clinical services in the facility. The CONTRACTOR agrees to cause its employees, agents and contractors who provide any services at any financial, business office, personnel, coding, medical records information systems and clinical services at any of the HHSC facilities to participate in the orientation and training programs.

19. BUSINESS ASSOCIATE; PRIVACY AND SECURITY ADDENDUM. By signing this contract, CONTRACTOR acknowledges that it is a Business Associate of HHSC within the meaning of the federal privacy and security laws as stated in 45 C.F.R. Parts 160 and 164, Subparts A, C, and E. CONTRACTOR further acknowledges that it has read the Privacy and Security Addendum, which is posted on the HHSC internet (www.hhsc.org) and is applicable to all Business Associates. Said Privacy Addendum is hereby incorporated by reference and made a part of this agreement as if fully repeated herein. By signing this contract, CONTRACTOR agrees to fully comply with, and be bound by, all the terms set forth in the Privacy and Security Addendum.

20. PUBLICITY. The CONTRACTOR shall not refer to the HHSC or any office, agency, or Officer thereof, or any HHSC employee, including the head of the purchasing agency, the DIRECTOR, the Agency procurement officer, the HHSC Board of Directors, or to the services or goods, or both, provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Agreement shall be referred to the Agency Procurement officer.

21. OWNERSHIP RIGHTS AND COPYRIGHT. The HHSC shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire." All such material shall be delivered to the HHSC upon expiration or termination of this Agreement. The HHSC, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement.

22. LIENS AND WARRANTIES. Goods provided under this Agreement shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Agreement documents, whichever are greater.

23. ACCESS TO BOOKS AND RECORDS. If the value or cost of Services rendered to HHSC pursuant to this Agreement is Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, CONTRACTOR agrees as follows:

- a. Until the expiration of four (4) years after the furnishing of such services, CONTRACTOR shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly-authorized representative, the Comptroller General, or the Comptroller General's duly-authorized representative, such books, documents, and records as may be necessary to certify the nature and extent of the cost of such Services; and
- b. If any such Services are performed by way of subcontract with another organization and the value or cost of such subcontracted Services is Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, such subcontract shall contain and CONTRACTOR shall enforce a clause to the same effect as paragraph 23.a immediately above. The

availability of CONTRACTOR's books, documents and records shall be subject at all times to all applicable legal requirements, including without limitation, such criteria and procedures for seeking and obtaining access that may be promulgated by the Secretary by regulation. The provisions of paragraphs 23.a. and 23.b. shall survive the expiration or other termination of this Agreement, regardless of the cause of such termination.

24. ANTITRUST CLAIMS. The HHSC and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to HHSC any and all claims for overcharges as to goods and materials purchased in connection with this Agreement, except as to overcharges which result from violations commencing after the price is established under this Agreement and which are not passed on to the HHSC under an escalation clause.

25. GOVERNING LAW. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a State court of competent jurisdiction in Honolulu, Hawaii.

26. COMPLIANCE WITH LAWS. The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Agreement.

27. ENTIRE AGREEMENT. This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the HHSC and the CONTRACTOR relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the HHSC and the CONTRACTOR other than as set forth or as referred to herein.

28. SEVERABILITY. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.

29. WAIVER. The failure of the HHSC to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the HHSC's right to enforce the same in accordance with this Agreement. The fact that the HHSC specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of the HHSC's rights or the CONTRACTOR's obligations under the law.

SPECIAL CONDITIONS

1. **Conflict of Interest:** The Contractor shall not undertake any work that represents a potential conflict of interest, or which is not in the best interest of HHSC or the State without prior written approval by HHSC. The Contractor shall fully and completely disclose any situation that may present a conflict of interest. If the Contractor is now performing or elects to perform during the term of this contract any services for any HHSC health plan, provider or Contractor or an entity owning or controlling same, the Contractor shall disclose this relationship prior to accepting any assignment involving such party.
2. **Contract:**
 - 2.1 The contract between HHSC and the contractor shall consist of (1) the Request for Proposal (RFP) and any amendments thereto, and (2) the proposal submitted by the contractor in response to the RFP. In the event of a conflict in language between the two documents referenced, the provisions and requirements set forth and/or referenced in the RFP shall govern. However, HHSC reserves the right to clarify any contractual relationship in writing, and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP or the contractor's proposal. In all other matters not affected by the written clarification, if any, the RFP shall govern.
 - 2.2 The contract shall be construed according to the laws of the State of Hawaii. The State of Hawaii is not obligated for the expenditures under the contract until funds have been encumbered.
3. **Disclosure of Confidential Information:** The Contractor shall not, without prior written approval from the Contracting Officer, either during or after the performance of the services required by this contract, use, other than for such performance, or disclose to any person other than HHSC personnel with a need to know, any information, data, material, or exhibits created, developed, produced, or otherwise obtained during the course of the work required by this contract. This nondisclosure requirement shall also pertain to any information contained in reports, documents, or other records furnished to the Contractor by HHSC.
4. **Effective Date:** The effective date of this contract shall be the date that the Contracting Officer signs the Offer and Award page of this document unless otherwise stated in this document.
5. **Term of Contract and Option to Renew:**
 - 5.1 The initial term of this contract shall be for one (1) initial year with two (2) one-year options to extend, not to exceed a total contracting period of three (3) years.

The terms and conditions of any such contract extension shall remain the same as the original contract, as amended. All contract extensions shall be through contract amendment, and shall be at the sole option of HHSC.

5.2 When the Contracting Officer issues an amendment to extend the contract, the provisions of such extension will be deemed to have been accepted 60 days after the date of mailing by the Contracting Officer, even if the extension amendment has not been signed by the Contractor, unless within that time the Contractor notifies the Contracting Officer in writing that it refuses to sign the extension amendment. If the Contractor provides such notification, the Contracting Officer will initiate contract termination proceedings.

5.3 If the Contractor chooses not to renew this contract, the Contractor may be liable for certain costs associated with the transition of its members to a different Contractor. If the Contractor provides the Contracting Officer written notice of its intent not to renew this contract at least 180 days before its expiration, this liability for transition costs may be waived by the Contracting Officer.

6. **Termination - Availability of Funds:** Funds are not presently available for performance under this contract beyond the current fiscal year. No legal liability on the part of HHSC for any payment may arise under this contract until funds are made available for performance of this contract. HHSC shall make reasonable efforts to secure such funds.

7. **Insurance Requirements:**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Hawaii in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

7.1 **Minimum Scope And Limits Of Insurance:** Contractor shall provide coverage with limits of liability not less than those stated below.

7.1.1 **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

Appendix D

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$ 50,000
• Each Occurrence	\$1,000,000

7.1.1.1 The policy shall be endorsed to include the following additional insured language: ***“The State of Hawaii, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.”***

7.1.1.2 Policy shall contain a waiver of subrogation against HHSC, and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

7.1.2 Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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The policy shall be endorsed to include the following additional insured language: **“The State of Hawaii, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor.”**

7.1.3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

7.1.3.1 Policy shall contain a waiver of subrogation against the State of Hawaii, its departments, agencies, boards, commissions, universities and its officers, officials,

agents, and employees for losses arising from work performed by or on behalf of the Contractor.

- 7.1.3.2 This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

7.1.4 Professional Liability (Errors and Omissions Liability)

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- 7.1.4.1.1 In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.
- 7.1.4.2 Policy shall contain a waiver of subrogation against the State of Hawaii, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- 7.1.4.3 The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.

7.2 Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:

- 7.2.1. The State of Hawaii, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.
- 7.2.2 The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.

7.2.3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

7.3. Notice Of Cancellation: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to HHSC. Such notice shall be sent directly to **HHSC, General Counsel, 3675 Kilauea Avenue, Honolulu, Hawaii 96813** and shall be sent by certified mail, return receipt requested.

7.4. Acceptability Of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Hawaii with an "A.M. Best" rating of not less than A- VII. The State of Hawaii in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

7.5. Verification Of Coverage: Contractor shall furnish the State of Hawaii with certificates of insurance (ACORD form or equivalent approved by the State of Hawaii) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Hawaii before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the Point of Contact named in Section 1, Subsection 1.4, Point of Contact. HHSC project/contract number and project description shall be noted on the certificate of insurance. HHSC reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

7.6. Exceptions: In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Hawaii agency, board, commission, or university, none of the above shall apply.

Instructions for Hawaii Compliance Express

Instead of filling out forms and manually applying for the certificates listed below at the various state agencies, this new process allows businesses to register online through a simple wizard interface at:

<http://vendors.ehawaii.gov>

One simple interface covers all the forms with all the state agencies and partners. Easy to read instructions and context sensitive help make compliance safe, fast, and efficient. Using the Wizard will file with the [Dept. of Taxation](#) (to get your Taxpayer ID) and optionally with the [Business Registrations Division](#) of the [DCCA](#). If you have or will have employees, the Wizard will also file with [Dept. of Labor and Industrial Relations](#).

Vendors that elect to use the new Hawaii Compliance Express services will be required to pay an annual fee of \$15.00.

Government procurement personnel will be provided with no-cost online access to the HCE system, allowing them to view and print the compliance status of registered vendors. Since the HCE process may require the disclosure of sensitive company information, access to view information on registered vendors will be restricted to the respective vendor and to registered authorized procurement personnel.

Vendors choosing not to participate in the program will be required to provide the paper certificates. This can be done by contacting the various state agencies below:

Tax Clearance Certificate

Pursuant to Section 103-53, Hawaii Revised Statutes, businesses are required to obtain a valid Tax Clearance Certificate from the Hawaii DOT and the Internal Revenue Service prior to executing a contractual agreement with a State Agency, if the “not-to-exceed” total dollar amount of the contract is \$25,000.00 or greater. HHSC is a State of Hawaii Agency and enforces this requirement.

The tax clearance certificate shall be obtained on the State of Hawaii, DOTAX “TAX CLEARANCE APPLICATION”, Form A-6 (rev. 1998) which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax, as indicated below. Please make sure the **(CITY, COUNTY, OR STATE GOVERNMENT CONTRACT IN HAWAII)** box, under paragraph No. 4 of Form A-6, is marked as the reason the Tax Clearance is required.

Appendix E

DOTAX Website: <http://www.state.hi.us/tax/tax.html> (Scroll down to “Forms and Instructions” and open “Alphabetical Listing of Tax Forms (current forms only)”.

DOTAX Forms by Mail: 808 587-7572
1 800 222-7572

DOTAX Forms by Fax: (on Oahu) 808 587-7572
(outside of Oahu) 808 678-0522

Completed tax clearance applications may be mailed to one of the district tax offices listed on the application or faxed to one of the following numbers:

IRS:		808 541-1976
DOTAX:	Oahu	808 587-1720 or 808-587-1488
	Maui	808 984-8522
	Kauai	808 274-3461
	Hawaii	808 974-6300

If mailed, out-of state businesses should send their application to DOTAX’s Oahu District Office. To expedite processing, businesses should consider “hand-carrying” the application to any District Office.

An original, certified copy (green stamp) is required for HHSC execution of a contract.

DLIR Certificate of Compliance. By law vendors are required to provide a Certificate of Compliance from the Hawaii State Department of Labor and Industrial Relations (DLIR), TO ENSURE COMPLIANCE WITH LAWS, AS APPLICABLE, CONCERNING UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION, TEMPORARY DISABILITY INSURANCE, AND PREPAID HEALTH CARE.

Visit http://hawaii.gov/labor/forms/LIR27_11-29-04.pdf to obtain Form LIR#27. Once approved by DLIR, ***provide HHSC a copy of the certificate.***

Certificate of Good Standing. By law vendors are required to provide a Certificate of Good Standing from the Hawaii State Department of Commerce and Consumer Affairs (DCCA). Business are required to be registered to do business in the State of Hawaii. (Certificate of Good Standing not required for "Sole Proprietorship".)

Visit <http://www.ehawaii.gov.org/intials/> register on-line. Or, to obtain a Certificate by phone call (808) 586-2727. ***Provide HHSC a copy of the certificate.***

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